



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Transportation and
Public Facilities

Design & Engineering Services
Environmental Section

3132 Channel Drive
Juneau, Alaska 99811-2500
Main: 907-465-2960
Toll free: 800-467-6955
Fax: 907-465-2460

January 9, 2014

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Edward J. Kowalski, Director
Office of Compliance and Enforcement
U.S. EPA Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

Dear Mr. Kowalski:

I received your letter dated November 27, 2013 with a demand for payment of stipulated penalties pursuant to Section X of the Clean Water Act consent decree filed September 21, 2010. This letter provides you with an update of the actions that the Department of Transportation and Public Facilities (DOT&PF) has taken to comply with the decree, explain some of the costs to achieve compliance, and relay DOT&PF's position regarding payment of stipulated penalties.

DOT&PF, our contractors, and our consultants have structurally and organizationally changed our approach to storm water management. Thus, EPA's stated goal at the start of this consent decree has been achieved: DOT&PF's storm water program is the model for statewide storm water management. Compliance with the consent decree has not been without cost to the department's other goals and to the public. During the consent decree timeframe, DOT&PF has expended over \$35 million of public funds to reach the level of oversight needed for compliance. This cost does not include indirect costs to the traveling public's safety.

Department wide compliance for timely BMP maintenance during this three year timeframe exceeds 99%. Collectively, we are hard pressed to identify any program, much less heavy civil construction, which achieves this high level of programmatic compliance. DOT&PF's position is that the public has paid sufficiently for this very high level of success. Further costs, particularly of a punitive nature are not warranted, send the wrong message to Alaska's professional storm water practitioners, and would be a misguided expenditure of public monies. Because of the program's high rate of compliance in maintaining effective storm water controls and the large public cost it has taken and will continue to take, DOT&PF respectfully requests that EPA waive the stipulated penalties, as outlined in the decree paragraph 53.

Since the decree became effective, in order to improve CGP compliance, review active projects for decree compliance and produce the decree annual report DOT&PF:

- Created and filled five full-time and three seasonal storm water specific positions;
- Created and implemented a statewide system for storm water oversight and compliance;
- Restructured the construction sections so that the storm water staff are in a unit with a designated manager responsible for their staffing and activities;
- Expended \$4.9 million on environmental engineering consultants for decree specific tasks;
- Created and implemented statewide training, AK-CESCL is a construction erosion and sediment control training program that is a model for other states as an interagency-contractor collaboration. DOT&PF has held the chairman position of the AK-CESCL oversight committee since the beginning. Through this role, DOT&PF leads the committee's efforts to keep the training current and continue to improve it; the other agencies are the Departments of Environmental Conservation and Natural Resources, the Army Corps of Engineers, the Municipality of Anchorage, the Alaska Railroad, the Associated General Contractors of Alaska and the Associated Builders and Contractors of Alaska.
- Leads the offering of a national advanced construction inspection certification, CISEC; a DOT&PF employee is the only CISEC instructor in the state.

In summary, DOT&PF's position is our program has more than met the goal established by EPA, has expended substantive public monies in doing so, and further punitive stipulated penalties will undermine the program's successes. If EPA consents with DOT&PF's position, then we respectfully request expedited termination of the storm water portion of the consent decree. If EPA disagrees with DOT&PF position, we would like to meet face-to-face as the next step in resolution.

Sincerely,



Roger Healy,
Chief Engineer, P.E.

cc:

Chief, Environmental Defense Section, U.S. Department of Justice
Chief, Environmental Enforcement Section, U.S. Department of Justice
Mark A. Nitczynski, Attorney, U.S. Department of Justice, Denver (electronic transmission)
Kathryn C. Macdonald, Attorney, U.S. Department of Justice, Washington, D.C. (electronic)
Chris Bellovary, Assistant Regional Counsel, U.S. EPA Region 10 (electronic transmission)
Endre Szalay, Assistant Regional Counsel, U.S. EPA Region 10 (electronic transmission)
Steven Potokar, NPDES Compliance Officer, U.S. EPA Region 10 (electronic transmission)
Mark Jen, Wetlands Compliance Officer, U.S. EPA, Region 10 (electronic transmission)